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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/987,226	11/14/2001	Raymond Anthony Joao	RJ371	6756

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RAYMOND A. JOAO, ESQ.
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EXAMINER

NAJARIAN, LENA

ART UNIT PAPER NUMBER

3626

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/06/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No. 09/987,226	Applicant(s) JOAO, RAYMOND ANTHONY	
	Examiner Lena Najarian	Art Unit 3626	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 November 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Notice to Applicant

1. This communication is in response to the amendment filed 11/12/06. Claims 1-9 are pending. Claims 1-9 have been amended. Claims 10-21 have been canceled.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
3. The rejection of claim 12 under 35 U.S.C. 112, second paragraph, is hereby withdrawn due to the amendment filed 11/12/06.
4. Claim 9 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
5. Claim 9 recites the limitation "the receiver" in line 12. The claim recites "at least one of a receiver for receiving and a memory device for storing" and subsequently requires a receiver for the transmission. Therefore, it is unclear whether the receiver is required or if it is in the alternative only.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 1-9 are rejected under 35 U.S.C. 102(e) as being anticipated by

Ballantyne et al. (5,867,821).

(A) Referring to claim 1, Ballantyne discloses an apparatus, comprising (abstract of Ballantyne):

a processor, wherein the processor processes a request to access information contained in a patient's healthcare record, wherein the processor determines whether a requesting individual is authorized to access information contained in the healthcare record, wherein the processor facilitates an accessing of the information contained in the healthcare record, and further wherein the processor generates a notification report containing information regarding the accessing of the information contained in the healthcare record; and a transmitter, wherein the transmitter transmits the notification report to a communication device associated with the patient, and further wherein the notification report is transmitted to the communication device in real-time over a wireless communication network (col. 7, line 67 – col. 8, line 60, col. 15, lines 22-39, col. 16, lines 7-13, and col. 12, lines 35-57 of Ballantyne).

Insofar as the claim recites "at least one of" or "or," it is immaterial whether or not the other elements are also disclosed.

(B) Referring to claim 2, Ballantyne discloses wherein the requesting individual is a healthcare provider (col. 8, lines 20-28 of Ballantyne).

Insofar as the claim recites "at least one of" or "or," it is immaterial whether or not the other elements are also disclosed.

(C) Referring to claim 3, Ballantyne discloses a receiver, wherein the receiver receives the request to access information contained in the healthcare record (col. 2, lines 18-20 and col. 7, line 67 – col. 8, line 2 of Ballantyne)

Insofar as the claim recites "at least one of" or "or," it is immaterial whether or not the other elements are also disclosed.

(D) Referring to claim 4, Ballantyne discloses wherein the processor processes identification information associated with the requesting individual (col. 8, lines 28-31 of Ballantyne).

Insofar as the claim recites "at least one of" or "or," it is immaterial whether or not the other elements are also disclosed.

(E) Referring to claim 5, Ballantyne discloses wherein the notification report contains information regarding accessing of the information contained in the healthcare record (col. 8, lines 52-60 of Ballantyne).

Insofar as the claim recites "at least one of" or "or," it is immaterial whether or not the other elements are also disclosed.

(F) Referring to claim 6, Ballantyne discloses wherein the processor stores information regarding the accessing of the information contained in the healthcare record (col. 8, lines 54-56 of Ballantyne).

Insofar as the claim recites "at least one of" or "or," it is immaterial whether or not the other elements are also disclosed.

(G) Referring to claim 7, Ballantyne discloses wherein the processor generates an activity report containing information regarding the accessing of the information contained in the healthcare record, wherein the activity report is generated monthly (col. 8, lines 5-7 and col. 8, lines 52-60 of Ballantyne).

Insofar as the claim recites "at least one of" or "or," it is immaterial whether or not the other elements are also disclosed.

(H) Referring to claim 8, Ballantyne discloses wherein the apparatus transmits the activity report to the communication device (col. 8, lines 52-60 and col. 3, lines 60-67 of Ballantyne).

(I) Referring to claim 9, Ballantyne discloses an apparatus, comprising (abstract of Ballantyne):

a memory device for storing a restriction regarding an ability of a first individual to access information contained in a healthcare record, wherein the healthcare record is associated with a second individual, and further wherein the restriction is transmitted to the receiver from a communication device associated with the second individual (col. 8, lines 7-43 of Ballantyne); and

a processor for processing a request to access information contained in the healthcare record, wherein the processor processes the request utilizing the restriction, and further wherein the processor determines whether an accessing of the information contained in the healthcare record is authorized, based on the restriction (col. 8, lines 2-60 of Ballantyne).

Insofar as the claim recites "at least one of," or "or," it is immaterial whether or not the other elements are also disclosed.

Response to Arguments

8. Applicant's arguments filed 11/12/06 have been fully considered but they are not persuasive. Applicant's arguments will be addressed hereinbelow in the order in which they appear in the response filed 11/12/06.

(1) Applicant states that the present invention, as defined by claims 1-9, is patentable over the prior art. Applicant respectfully submits that Ballantyne does not disclose or suggest many of the specifically recited features of independent claims 1 and 9.

(A) As per the first argument, the Examiner is concerned that, aside from merely alleging that certain claimed features are not anticipated from Ballantyne, essentially in the form of blanket statements, Applicant does not point to any specific distinction(s) between the features disclosed in the reference and the features that are presently claimed. In particular, 37 CFR 1.111(b) states, "A general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the reference does not comply with the requirements of this section." Applicant has failed to specifically point out HOW the language of the claims patentably distinguishes them from the applied reference. Also, arguments or conclusions of Attorney cannot take the place of evidence. *In re Cole*, 51

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CCPA 919, 326 F.2d 769, 140 USPQ 230 (1964); *In re Schulze*, 52 CCPA 1422, 346 F.2d 600, 145 USPQ 716 (1965); *Mertizner v. Mindick*, 549 F.2d 775, 193 USPQ 17 (CCPA 1977).

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lena Najarian whose telephone number is 571-272-7072. The examiner can normally be reached on Monday - Friday, 9:30 am - 6:00 pm.


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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Thomas can be reached on 571-272-6776. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Ln

In
1-30-07


JOSEPH THOMAS
SUPERVISORY PATENT EXAMINER